

REMARKS

The Office Action mailed May 7, 2007, in the nature of a requirement for restriction, has been carefully reviewed. Favorable consideration is respectfully requested.

Restriction has been required among what the Examiner considers to be patentably distinct species of the invention, as follows:

Group I, drawn to N-acyl derivatives of 2-phenylpiperidines, presently comprising claims 1-8; and

Group II, drawn to a process of making 2-acyl derivatives of 2-phenylpiperidines, presently comprising claims 9 and 10.

Applicant hereby elects Group I, claims 1-8, drawn to N-acyl derivatives of 2-phenylpiperidines with traverse,

Applicant hereby elects the species of claim 3, namely, the compound according to claim 1 wherein R¹ is an optionally substituted hydroxyl group.

This election is with traverse because it is respectfully submitted that WO/03066589, Alvaro et al., does not anticipate or make obvious the compounds and method claimed herein.

In the compounds disclosed at page 3 of Alvaro, R^6 corresponds to R^1 in the formula of claim 1, and Alvaro, R^6 is said to be hydrogen or NR^7R^8 . However, in claim 1 of the subject application, R^1 is an optionally substituted alkyl, hydroxyl, thiol, carbonyl, sulfinyl, sulfonyl group or $NR^{11}R^{12}$, wherein R^{11} is a substituted carbonyl group or a substituted sulfonyl group and R^{12} represents hydrogen or an optionally substituted alkyl group. In Alvaro, formulae 3(a) to 3(c), when R^6 is NR^7R^8 , R^7 is hydrogen or C_{1-4} alkyl and R^8 is hydrogen, phenyl, C_{3-7} cycloalkyl, $(CH_2)_pC(O)C_{1-4}$ alkyl or a 6-membered heteroaryl ring.

While Alvaro does disclose piperidyl carboxamide compounds, these are not the compounds claimed in the present application, and therefore the disclosure of Alvaro does not disclose the technical feature on which applicant relies for unity of invention.

If the election requirement is maintained, it will be clear on the record that the PTO considers the groups to be patentably distinct from one another i.e., prima facie non-obvious from one another. This means that a reference identical to the one group would not render the other group prima facie obvious.

who was not cited ↗ 102 + 103 a. & rep only as seems to support restriction reqn.

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Appln. No. 10/581,045
Amd. dated June 7, 2007
Reply to Office Action of May 7, 2007

Favorable consideration and examination of all
pending claims on the merits are respectfully requested.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By /Anne M. Kornbau/
Anne M. Kornbau
Registration No. 25,884

AMK:srd
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528
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